N. Y. 112; *Anderson* v. *Tyree,* 12 Utah 129; *McCafferty* v. *Guyer,* 59 Pa. 109. The Supreme Court of the United States said, in construing Sec. 2, Art. 3, of the Federal Constitution which confers original jurisdiction on that court, that the affirmative words, declaring in what cases the Supreme Court should have original jurisdiction, must be construed negatively as to all other cases. Applying the same principle of construction to the instant case, it follows that those designated in the constitution shall be the only persons entitled to vote, excluding all others. The instant case does not mention *State* v. *French* (Ohio, 1917), 117 N. E. 173, which held a similar act valid. See 16 MICH. LAW REV. 125. In that case the court held that the constitutional section was merely inclusive but did not exclude others whom the legislature saw fit to include; i. e. the constitutional requirement was not exclusive of all others. In accord with Ohio are Illinois, Nebraska, and Washington. *Scown* v. *Czarnecki,* 264 Ill. 305; *State* v. *Cones,* 15 Neb. 444; *Holmes & Bull Furniture Co.* v. *Hedges,* 13 Wash. 696. Wisconsin and Michigan have decisions both ways. From the above cases it will be seen that as yet there is no weight of authority and that within the same year (1917) the Ohio and Indiana courts have handed down conflicting opinions.

CRIMINAL LAW—COMMENTS BY COUNSEL—FAILURE TO PRODUCE WITNESSES.—In his closing argument to the jury, counsel for the state remarked that it was accused's duty to bring in as witnesses two persons who had been jointly indicted with accused, but who had not as yet been brought to trial. The court, after presentation of authorities, overruled an objection to the propriety of such remark. *Held,* statements of counsel together with the ruling of the court thereon constituted prejudicial and reversible error. *People* v. *Munday,* (Ill., 1917), 117 N. E. 286.

It may be stated as a general proposition that no inference can be drawn from the failure of a defendant to call witnesses which are equally accessible to the state. WIGMORE, EVIDENCE, § 288. Such is the rule in Illinois, *People* v. *Munday, supra,* accused's co-defendants being considered equally available to the state. In a few jurisdictions, however, mere reference to the failure of co-defendants to testify does not constitute error. *People* v. *Ye Foo,* 4 Cal. App. 730; *State* v. *Madden,* 170 Ia. 230. Some courts have allowed reference to the failure of co-defendants to testify, and, also, have permitted counsel to draw inferences therefrom as to the guilt or innocence of the accused. *McElwain* v. *Commonwealth,* 146 Ky. 104; *State* v. *Matthews,* 98 Mo. 125; *People* v. *Ruef,* 14 Cal. App. 576. Other courts in which the precise question has come up for decision have held to the contrary. *Harville* v. *State,* 54 Tex. Crim. 426; *Brock* v. *State,* 123 Ala. 24. In Missouri, where such comment was permissible, a statute has been passed forbidding comment on the failure of co-defendants to testify, but this statute has not been extended to a case in which the witness was charged in a separate information with an offense growing out of the same transaction as that in which the defendant was involved. *State* v. *Shepherd,* (Mo., 1917), 192 S. W. 427. However justifiable the position of those courts which allow comment on the absence of co-defendants may be, it seems clear that when

counsel go so far as to mis-state the law to the prejudice of the accused, and especially when such error is not corrected by the court, a new trial should be granted. *People* v. *Smith,* 121 Cal. 355. For a clear statement of the reasons for forbidding counsel to draw inferences from failure of co-defendant to testify, see *State* v. *Cousins,* 58 Ia. 250.

DAMAGES—MITIGATION OF—ERROR IN TRANSMISSION OF TELEGRAM.—Plaintiff shipped a carload of apples from Oregon to California and drew on the consignee at $2.00 per box. The consignee telegraphed a refusal to pay more than $1.25. In reply plaintiff delivered to the defendant company a telegram addressed to his California agents authorizing them to accept $1.80, —but the telegram as delivered read $1.08. The agent, a bank, collected at that price and completed the sale by delivery. When the mistake was discovered, the defendant succeeded in getting an offer of $1.50 from the consignee, which the plaintiff refused and elected to sue the company for its negligence. *Held,* that plaintiff's election to retain $1.08 was no new offer, but an effort to make the best of a bad bargain. The company was still liable to him for negligence, but he was bound to mitigate damages and so can recover only the difference between $1.80 and $1.50. *Bentley* v. *Western Union Telegraph Co.* (Wash., 1917), 167 Pac. 1127.

Two judges dissent on the theory that by accepting the $1.50 offer plaintiff would have lost the right to further recovery from the company because the acceptance and not the mistake would then have been the proximate cause of loss. They insisted that the damages should be the difference between the price in the telegram as sent and as delivered. This position, however, is untenable, for it is an elementary principle of the law of damages that one who suffers through the negligence of another is bound to reduce his loss by all reasonable means and can then recover the balance from the tort feasor. Defendant contended that when plaintiff refused the $1.50 offer, he made a new contract and so this new contract and not the error was the proximate cause of his loss; that he might well have rescinded the original contract with the consignee who must be deemed to have accepted fraudulently, since he himself had already offered more than the price at which the sale was consummated. Cases cited in the opinion, however, seem to justify the decision, that a contract entered into by mistake through the negligence of the agent may be ratified without losing the right of action against the agent. The offeror may elect to be bound by his contract and need not subject himself to the risk of doubtful litigation, particularly as here in a distant forum, and where the subject matter of the controversy is perishable and may deteriorate *pendente lite. Cf. Reed* v. *Western Union Telegraph Co.,* 135 Mo. 661; *Pepper* v. *Telegraph Co.,* 87 Tenn. 554. The case of *Western Union Telegraph Co.* v. *Shotter,* 71 Ga. 760, is a strong authority in point. But the closest analogy is presented by *Ayer* v. *Western Union Telegraph Co.,* 79 Me. 493, where an offer to sell lath at $2.10 per M. was incorrectly transmitted $2.00, and accepted at that price. Though the mistake was discovered before shipment the court held that the telegraph company was the agent of him who first employed it and a